

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

VERNON MERCIER, derivatively on behalf of	§	
MASSEY ENERGY COMPANY,	§	
	§	
	§	
Plaintiff,	§	Case No. 2:07-cv-0555
	§	
v.	§	Judge David A. Faber
	§	
DON L. BLANKENSHIP, BAXTER	§	(Derivative Action)
PHILLIPS, JR., DAN MOORE, E. GORDON	§	
GEE, RICHARD M. GABRYS, JAMES	§	
CRAWFORD, BOBBY R. INMAN, ROBERT	§	
H. FOGLESONG, H. DREXEL SHORT, JR., J.	§	
CHRISTOPHER ADKINS, JEFFREY M.	§	
JAROSINSKI, LADY BARBARA THOMAS	§	
JUDGE, STANLEY C. SUBOLESKI,	§	
ELIZABETH CHAMBERLIN AND THOMAS	§	
COOK,	§	
	§	
Defendants,	§	
	§	
and	§	
	§	
MASSEY ENERGY COMPANY, a Delaware	§	
corporation,	§	
	§	
Nominal Defendant.	§	
	§	

STIPULATION AND ORDER

WHEREAS, on December 5, 2008, Vernon Mercier ("Mercier") filed his Amended Shareholder Derivative Complaint (the "Amended Complaint") on behalf of nominal defendant Massey Energy Company ("Massey");

WHEREAS, on February 27, 2009, Massey and Defendants Dan R. Moore, E. Gordon Gee, Richard M. Gabrys, James B. Crawford, Bobby R. Inman, Robert H. Foglesong, Lady Barbara Thomas Judge, Stanley C. Suboleski, Don L. Blankenship, Baxter Phillips, Jr., H. Drexel Short, Jr., J. Christopher Adkins, Jeffrey M. Jarosinski, Elizabeth Chamberlin and Thomas Cook (the "Defendants") filed Joint Motions to Dismiss the Amended Complaint (the "Joint Motions to Dismiss");

WHEREAS, on March 3, 2009, Massey and Defendants filed a Joint Motion for Rule 11 Sanctions, moving this Court for an order imposing sanctions on Mercier and his attorneys, Lee D. Rudy, Eric L. Zagar, Robin Winchester, Michael J. Hynes and J. Daniel Albert of Barroway, Topaz, Kessler, Meltzer and Check LLP and Barry Hill of Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C. (collectively, "Mercier's Attorneys"), for violating Federal Rules of Civil Procedure 11(b)(1) and 11(b)(2) (the "Rule 11 Motion");

WHEREAS, on September 30, 2009, this Court issued a Memorandum Opinion and Order, granting the Joint Motions to Dismiss and stating that the Court was withholding issuance of its Judgment Order pending its resolution of the Rule 11 Motion (the "Opinion");

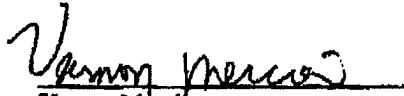
WHEREAS, the parties wish to achieve a final resolution of all claims alleged in the Amended Complaint and the Rule 11 Motion and counsel have met and conferred toward that end;


IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that Massey and Defendants hereby withdraw the Rule 11 Motion, with prejudice and without costs, and that the parties jointly and respectfully request that this Court enter final judgment in this matter, granting the Joint Motions to Dismiss, for the reasons set forth in the Order,

IT IS HEREBY FURTHER STIPULATED AND AGREED, that, upon the ordering of the withdrawal of the Rule 11 Motion and the entry of final judgment in this matter granting the Joint Motions to Dismiss, Mercier, in consideration of the withdrawal of the Rule 11 Motion, and in both his individual capacity and on behalf of nominal defendant Massey, agrees that he will not appeal, collaterally attack or otherwise challenge or dispute the effect of the final judgment of this Court and, further, Mercier's Attorneys, in consideration of the withdrawal of the Rule 11 Motion, agree that they will not represent or assist other counsel in the representation of any person in an appeal of, collateral attack on or other challenge to or dispute of the effect of the final judgment of this Court.

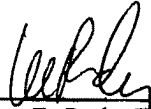
October 13, 2009

Respectfully submitted,


Vernon Mercier

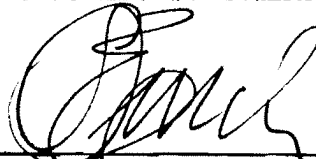

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On behalf of Anapol, Schwartz, Weiss, Cohan,
Feldman & Smalley, P.C. and as Counsel for
Plaintiff



Lee D. Rudy, Esq.
Robin Winchester, Esq.
J. Daniel Albert, Esq.
Eric L. Zagar, Esq.
James A. Maro, Esq.
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**On behalf of Barroway, Topaz, Kessler, Meltzer
& Check LLP and as Counsel for Plaintiff**

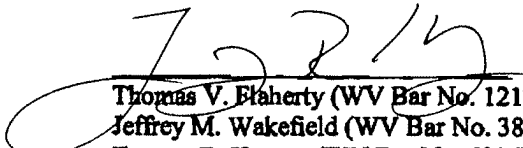


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Christopher Adkins, Jeffrey M. Jarosinski,
Elizabeth Chamberlin and Thomas Cook.**

SO ORDERED.

David A. Faber
Senior United States District Judge

Date